

Award No. 11764

Docket No. TE-10534

NATIONAL RAILROAD ADJUSTMENT BOARD

THIRD DIVISION

Nathan Engelstein, Referee

PARTIES TO DISPUTE:

THE ORDER OF RAILROAD TELEGRAPHERS

WABASH RAILROAD COMPANY

STATEMENT OF CLAIM: Claim of the General Committee of The Order of Railroad Telegraphers on the Wabash Railroad, that:

Claim No. 1

(1) The Carrier violates the Agreement between the parties when commencing on the 20th day of March, 1956, it removed the work of transmitting and/or receiving train consists, messages and other telegraphic reports from covered employes at North Kansas City; Moberly, Mo., Luther Yards, St. Louis, Mo., and General Offices in the Railway Exchange Building, St. Louis, Mo., which work is, by the Agreement, solely and exclusively reserved to employes covered by the Telegraphers' Agreement.

(2) The Carrier shall, because of the violations set forth above, pay to the senior, idle telegrapher, extra in preference, one day's pay at the pro rata rate of the positions entitled to perform such work; or a day's pay at the time and one-half rate, if such work would have been performed on a rest day or holiday, for each and every eight (8) hour shift during each twenty-four (24) hour period, at each named location, during which said violations continue. The identity of such person or persons entitled to such payments is to be ascertained by a joint check of Carrier's records.

Claim No. 2

(1) The Carrier violates the Agreement between the parties when, commencing on the 2nd day of July, 1956, it removed the work of transmitting and/or receiving train consists, messages and other telegraphic reports from covered employes at Brush Yard, East Decatur Yard and Brooklyn Yard, all in Illinois.

(2) Carrier shall restore to the Agreement and the employes thereunder, the work of transmitting and/or receiving train consists, messages and other telegraphic reports.

(3) Carrier shall, during such diversion of telegraphic work, pay to senior, idle telegrapher, extra in preference, one day's pay at the pro rata rate of the positions entitled to perform the work; or a day's pay at the time and one-half rate, if such work would have been performed on a rest day or holiday, for each and every eight (8) hour shift, during each twenty-four (24) hour period at each named location, during which said violations continue. The identity of such person or persons entitled to such payments to be ascertained by a joint check of Carrier's records.

EMPLOYES' STATEMENT OF FACTS: There is in evidence an Agreement by and between the parties to this dispute effective September 1, 1955, as amended.

On November 10, 1955, Wabash Management convened in conference at the Railway Exchange Building, St. Louis, Missouri, General Chairman B. W. Lidgard, and Vice President C. O. Griffith of the Organization for the purpose of informing the employees' representatives of a proposed plan to install certain printing telegraph communication equipment technically known in the trade as "Integrated Data Processing System for Car and Train Movement," at some 17 different locations on the Wabash property, including 15 different yard offices.

The 15 yard offices selected for the installation of this printing telegraph "Transceiver" communication equipment, it was stated, would permit mechanized reporting of all through freight train operations and same-day reporting of complete information on all new loads moving on these trains. It was revealed that Way Freight Train Movements into or out of other terminal yards, would be reported not later than the following day; and that interchange movements at other yards would be reported on a similar basis.

It was also pointed out that at final terminal yard offices, and at intermediate yards complete advance train consists in train order would be furnished. The advance train consists being received by the transmission of the data on the punched cards by a relay system through the data processing center, with St. Louis destined to be one of the processing centers.

It was further explained that the data transmitted to the processing center would be received on punched cards, which would then be processed and summarized and retransmitted to the various stations going to make up the expanded printer communication system.

Traffic reports, operating and accounting reports, train consists, in fact, all matters of information relative to Car and Train Movements would be handled over the circuits within the "Integrated Data Processing System." A more detailed description of the Operation of this system as a whole will be made a little later on in this exposition of facts.

Pursuant to this conference, General Chairman B. W. Lidgard, in a letter dated November 17, 1955, advised Assistant General Manager F. A. Johnson, that:

"On November 10, 1955, Vice President C. O. Griffith of our Organization and I, discussed with you and your associates the management's plan to install IBM machines in yard offices and other offices at various locations on the system.

The claims should be dismissed for lack of jurisdiction and, if not dismissed, denied in all respects.

(Exhibits not reproduced.)

OPINION OF BOARD: This dispute resulted from Carrier's establishing an automated system of recording and transmitting data concerning the movement of cars in its transportation business.

The system, known as "Integrated Data Processing System for Car and Train Movement", but usually referred to as "I.D.P.", makes use of a machine known as a "Transceiver" which processes the familiar "IBM" punched cards. By means of this process numerous items of information concerning cars and trains being handled are transmitted from various yards to the Carrier's general offices and to other yards.

One of the functions of this system, which can be and normally is made use of, is the transmission of information concerning the "consist" of trains moving between yards where the "Transceivers" are located. It appears that prior to establishment of the "IDP" system such "consists" were transmitted by means of teletype or other communication devices operated by the telegraphers. This method still prevails where "Transceivers" are not located, or where this particular function is not utilized.

The work of preparing the IBM cards which are processed by the "Transceivers" is performed by clerks. Those employes also place the cards in the "feed" side of the machines and perform whatever work is necessary in the processing of them.

The telegraphers, petitioners in the present case, complain that since one of the results achieved by the "Transceivers", the transmission of what amounts to a "consist" of the train to the yard ahead (and perhaps in some cases the transmission of other data) is the same as work formerly handled by telegraphers, the Carrier has contravened the provisions of their Agreement by removing such work from them.

The Carrier's position is essentially that the Adjustment Board is without jurisdiction, and that "consists" or "messages" as such are not being transmitted by the "Transceivers", and that the operation of such machines is not covered by its agreements with any class of employes. It freely admits that where the cards are arranged for processing in the same order as the cars they represent stand in the train the same information—along with much more—that is contained in a "consist" results.

The record before us is extensive, but in many essential respects it is quite vague as to just what is in controversy. The Employes, for example, state their claim as a contention that removal of the specified work from telegraphers is violative of their Agreement. The claim contains no allegation that when the work was removed it was handed over to other employes outside the scope of the Telegraphers' Agreement. The Carrier, on the other hand, devotes a major portion of its argument to points that are not in dispute.

The Employes point to a long history of attempts to secure coverage of the operation of mechanical telegraph machines used to transmit and receive communications of record, by revision of their Scope Rule. This fact, together with the Carrier's requesting a conference with the General Chairman to discuss the impending establishment of the IDP system, provides the key to our problem.

The position of both parties has merit. The Employees certainly have an interest in the Carrier's communication work. But we are convinced that under the circumstances of this case it is an interest only and not a right that these employees have in the matter at hand. In short, the operation of such improved and composite machines as a "Transceiver" was not in the minds of the parties when they negotiated the Agreement establishing employee rights.

It follows that in our opinion the dispute here is one involving the formation of an agreement rather than one involving interpretation of an existing provision. This Board has no jurisdiction over disputes involving the formation of agreements.

The dispute, therefore, must be remanded to the parties for further negotiation. If negotiation fails, their proper forum is the National Mediation Board. Award 11221.

FINDINGS: The Third Division of the Adjustment Board, upon the whole record and all the evidence, finds and holds:

That the parties waived oral hearing;

That the Carrier and the Employees involved in this dispute are respectively Carrier and Employees within the meaning of the Railway Labor Act, as approved June 21, 1934; and

That this Division of the Adjustment Board has no jurisdiction over the dispute involved herein.

AWARD

Case remanded in accordance with Opinion and Findings.

NATIONAL RAILROAD ADJUSTMENT BOARD
By Order of THIRD DIVISION

ATTEST: S. H. Schulty
Executive Secretary

Dated at Chicago, Illinois, this 9th day of October 1963.